IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Criminal Appeal No.930 of 2000

Rajeswari :Appellant/Complainant

vs.

1. Nachimuthu
2. Karuppusamy Gounder
3. Kaliammal .. Respondents/Accused

This appeal is filed U/S.378 of Crl.P.C against the Judgment dated 18.6.1999 made in C.C.No.231 of 1997 on the file of the Court of Judicial Magistrate, Udumalpet.

For Appellant : Mr.K.Kalyanasundaram

For Respondents : Mr.S.Muthukrishnan

JUDGMENT

This appeal has been preferred against the judgment of acquittal in C.C.No.231 of 1997 on the file of the Court of Judicial Magistrate, Udumalpet, Coimbatore. The complainant is the wife of A1 Nachimuthu.

2) The short facts of the private complaint preferred by the complainant relevant for the purpose of deciding this appeal, are as follows:-

The complainant would state that on 5.6.1990, the marriage between the complainant and the first accused took place at Ariyanachipalayam and that at the time of marriage, he was presented with the gold chain weighing five soverigns and a pair of ear stud weighing two soverigns besides utensils and that three months later, the accused demanded more dowry and that the first accused had beat her and had driven out of the matrimonial home. The first accused had filed H.M.O.P before the Subordinate Judge, Udumalpet for divorce and since the first accused had filed a compromise petition ,withdrew the divorce petition. She would further allege that the first accused had demanded Rs.20,000/- from her in order to purchase a

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pair of bullocks and a cart and that since she could not bring Rs.20,000/- from her parents house, she was beaten by the first accused and sent out of the matrimonial home. On 10.3.1997, the first accused had once again beat the complainant holding her tuft and that she had sustained simple injury all over her body. There was a mediation took place in the village of the first accused but it would not be fructified. Now 2nd and 3rd accused are trying to conduct the second marriage for the first accused. The complainant would further allege in her complaint that on 28.3.1997, the first accused came to her parents house and criminally intimidated her with stones. Since the police have failed to take action against the complaint filed by her on 13.5.1997, she had filed this complaint under Section 200 Cr.P.C. for an offence under Sections 498(a) and 506(ii) IPC.

3) The learned Judicial Magistrate has taken the private complaint on his file after recording sworn statement and on appearance of the accused had furnished copies under Section 207 Cr.P.C. , when the change levelled against the accused were explained to them,they pleaded not guilty.

4) On the side of the complainant, the complainant has examined herself as P.W.1 besides P.Ws 2 to 4. P.W.1 is the complainant. P.W.2 is her brother. P.W.3 is an Inspector of Police and P.W.4 is the Head Clerk of District Munsif Court, Udumalpet. Exs P1 to P6 were marked. Neither oral nor documentary evidence was let in on the side of the accused.

4a) The complainant as P.W1 would narrate the events mentioned by her in her private complaint. Her allegation is that the accused had demanded dowry and also the first accused had cruelly treated her and beating her all over the body and that the first accused had filed a divorce petition against her before the Subordinate Judge, Udumalpet. But the same was subsequently withdrawn by her husband. She would further depose that the accused insisted to bring her Rs.20,000/- from her parents house to purchase a cart and a pair of bullocks. According to her, on the date of ococurrence, A1 came to her house and criminally intimidated her with stones and that she had preferred a complaint to All Women Police Station but they have not taken any action. Ex P1 is the marriage invitation of P.W.1 with A1. Ex P2 is an agreement entered into betweeen P.W.1 and the first accused. Ex P3 is the complaint preferred by the complainant before the All Women Police Station. Ex P4 is the complaint preferred by the complainant before the Superintendent of Police. Ex P5 is the acknowledgment for the original of Ex P4 being received in the office of the Superintendent of Police.

4b) P.W.2 is the brother of P.W.1 He has also corroborated the evidence of P.W.1 to the effect that A1 used to beat P.W.1 and A1 to A3 have harassed P.W.1 to bring dowry of Rs.20,000/- to enable A1 to

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purchase cart with bullocks. He would further state that on the date of the occurrence, A1 came to their house and criminally intimidated the complainant with stones.

4c) P.W.3 is the Inspector of All Women Police Station, Pollachi who would state that during March 1997, she was working as an Inspector of All Women Police Station, Udumalpet and that on 28.3.1997, the complainant has not preferred any complaint of dowry harassment against the accused,

4d) P.W.4 is the Head Clerk of District Munsif Court, Udumalpet through whom Ex P6 was marked.

5) When the incriminating circumstances were put to the accused.they denied their complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge has come to a conclusion that the guilt against the accused has not been proved beyond any reasonable doubt and consequently acquitted the accused from both the charges levelled against them. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

6) Now the point for determination in this appeal is whether the guilt against the accused under Sections 498(a) and 506(ii) IPC has been proved beyond any reasonable doubt?

7). Heard Mr.K.Kalyanasundaram, learned counsel appearing for the appellant and Mr.S.Muthukrishnan, learned counsel appearing for the respondents and considered their rival submissions.

8) The point:-

It is the definite case of the complainant that the first accused who is none other than her husband had demanded dowry and also beat her very often causing simple injuries all over the body. On 10.3.1997, according to P.W.1., A1 to A3 holding her tuft, beat her blue and black causing simple injuries all over her body. According to P.W.1 all the accused beat her insisting her to bring a sum of Rs.20,000/- from her parents house to enable A1 to purchase a pair of bullocks and a cart. The trial Court on the ground that to substantiate this allegation, the complainant had failed to examine neighbours who are residing in front of her house or in the same street. Except the evidence of her brother P.W.2 which is an interested testimony, there is absolutely no evidence let in by the complainant to prove the said incident.

8a) It is the case of P.W.1 that soon after the said occurrence, she had preferred a complaint to the All Women Police Station. P.W.3 is the Inspector of Police, All Women Police Station, Udumalpet who

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would depose that she has not received any complaint from the complainant(P.W.1) as alleged in the complaiant. Ex P4 is the copy of the complaint preferred by P.W.1 with the Superintendent of Police. Ex P4 is dated 13.5.1997. According to P.W.1, the said occurrence had taken place on 10.3.1997, but there is no explanation forthcoming from the complainant for her failure to prefer complaint soon after the occurrence. It is seen from the evidence of P.W.1 itself that the first accused has preferred a divorce petition against her on the ground of desertion and as a counterblast, the complainant has preferred this private complaint. If P.W.1 would have preferred a complaint for dowry harassment against the accused, she would have sent for those records from the concerned All Women Police Station.

8b) The learned trial Judge has pointed out the discrepancy crept in the evidence of P.Ws 1 and 2 in respect of offence charged under Section 506(ii) IPC. If the criminal intimidation as alleged by P.W.1 would have occurred in front of the house of the complainant, then she would have examined independent witnesses to prove the same. Except the interested testimony of P.W.2, there is no evidence available to arrive at a conclusion that the offence under Section 506(ii) IPC has been committed by the accused as alleged by the complainant.

9) Under such circumstances, I do not find any illegality or infirmity in the findings of the learned trial Judge in C.C.No.231 of 1997 on the file of the Court of Judicial Magistrate, Udumalpet in arriving at a conclusion that offence under Sections 498(a) and 506 (ii)IPC have not been made out against the accused. Point is answered accordingly.

10) In the resuslt, the appeal is dismissed confirming the Judgment in C.C.No.231 of 1997 on the file of the Court of Judicial Magistrate, Udumalpet.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Judicial Magistrate, Udumalpet.

+1cc to Mr.K.Kalyanasundaram, Advocate Sr 17085

AKM (CO)
km/22.3.

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